



STATE OF UTAH CONTRACT

1. CONTRACTING PARTIES: This contract is between the following Agency of the State of Utah:

Dept. of Transportation	810	Proc./All Regions	referred to as STATE and the following:
Agency Name	Agency Code	Division	
CONTRACTOR	Potters Industries Inc		LEGAL STATUS OF CONTRACTOR
Name			Sole Proprietor
P O Box 840			Non-Profit Corporation
Address			<input checked="" type="checkbox"/> For-Profit Corporation
Valley Forge	PA	19482	Partnership
City	State	Zip Code	Government Agency
Beth A. Miskewicz	(610)	651-4731	
Contact Person		Phone Number	55008190450
221933307	66611E		55008190450
Federal ID#	Vendor Number		Commodity Code(s)

2. CONTRACT TYPE AND PURPOSE:

This is a requirements contract to provide the State with glass beads for \$0.265 per pound to be used with water borne paint. A performance bond in the amount of \$4,770.00 is required.

3. PROCUREMENT: This contract is entered into as a result of the Procurement process on bid RF4082,

Requisition # 810 46000000068, FY 2004.

4. CONTRACT PERIOD: Effective date 12/08/03. Termination date 12/08/06, unless terminated early or extended in accordance with the terms of this contract. Renewal Options (if any) None.

5. CONTRACT COSTS: CONTRACTOR will be paid a maximum of \$999,999,999.99 for costs authorized by this contract

5. ATTACHMENT A: Division of Purchasing's Standard Terms and Conditions.

ATTACHMENT B: Scope of Work.

ATTACHMENT C: Special Terms and Conditions.

Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.

7. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:

A. All other governmental laws, regulations or actions applicable to the goods and/or services authorized by this Contract.

B. Utah State Procurement Code, Procurement Rules and Contractor's responses to Bid # RF4082 dated 11/25/03.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR
SEE ATTACHED

Contractor's Signature
BETH A MISKEWICZ

Contractor's Name
CONTRACT ADMINISTRATOR

Title

STATE OF UTAH

David K. Miles, Operations Engineer

Shirley Williams
Director, Division of Purchasing

Director, Division of Finance

Debra Boulton	(801) 965-4070	(801) 965-4073	dboulton@utah.gov
Agency Contact Person	Phone Number	Fax Number	Email Address

ENT'D MAR 08 2005
JUL 21 2005

049106

MAIL TO:

Request for Quotation

Solicitation Number: RF4082

STATE OF UTAH
 DIVISION OF PURCHASING
 3150 STATE OFFICE BUILDING, CAPITOL HILL
 P.O. BOX 141061
 SALT LAKE CITY, UTAH 84114-1061
 TELEPHONE (801) 538-3026
 FAX (801) 538-3882
<http://purchasing.utah.gov>



Due Date: 11/25/03

Date Sent: November 12, 2003

Agency Contract

Goods and services to be
 purchased:

PROVIDE GLASS BEADS FOR USE WITH WATERBOURNE PAINT

Please complete

Company Name Potters Industries, Inc. P.O. Box 840		Federal Tax Identification Number 22-1933307	
Ordering Address Valley Forge, PA 19482	City	State	Zip Code
Remittance Address (if different from ordering address) Potters Industries Inc. PO Box 8500-S-7815 Philadelphia PA 19178-7815	City	State	Zip Code
Type <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Proprietorship <input type="checkbox"/> Government	Company Contact Person Beth A. Miskewicz		
Telephone Number (include area code) 610-651-4731	Fax Number (include area code) 610-408-9723		
Company's Internet Web Address www.pottersbeads.com	Email Address beth.miskewicz@pottersbeads.com		
Discount Terms (for bid purposes, bid discounts less than 30 days will not be considered) XXX	Days Required for Delivery After Receipt of Order (see attached for any required minimums) 30 days ARO (40,000 lb minimum)		
<p>The following documents are included in this solicitation: Solicitation forms, instructions and general provisions, and specifications. <u>Please review all documents carefully before completing.</u></p> <p>The undersigned certifies that the goods or services offered are produced, mined, grown, manufactured, or performed in Utah. Yes _____ No <u>X</u> . If no, enter where produced, etc. <u>Kingman, AZ</u></p>			
Offeror's Authorized Representative's Signature 		Date November 13, 2003	
Type or Print Name Beth A. Miskewicz Contract Administrator		Position or Title	

ATTACHMENT A: STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the STATE to purchase certain specified services, and other approved purchases for the STATE.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.
4. **RECORDS ADMINISTRATION:** The CONTRACTOR shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the CONTRACTOR for costs authorized by this contract. These records shall be retained by the CONTRACTOR for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The CONTRACTOR agrees to allow STATE and Federal auditors, and STATE Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **CONFLICT OF INTEREST:** CONTRACTOR represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.
5. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The CONTRACTOR shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the STATE to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the STATE, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the CONTRACTOR by the STATE. The CONTRACTOR shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the STATE for these contract services. Persons employed by the STATE and acting under the direction of the STATE shall not be deemed to be employees or agents of the CONTRACTOR.
7. **INDEMNITY CLAUSE:** The CONTRACTOR agrees to indemnify, save harmless, and release the STATE OF UTAH, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the CONTRACTOR'S officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.
8. **EQUAL OPPORTUNITY CLAUSE:** The CONTRACTOR agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the CONTRACTOR agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.
9. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
10. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the parties hereto, and attached to the original signed copy of the contract.
11. **DEBARMENT:** The CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by the STATE.
12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
13. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.
14. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the contractor's skill or judgement to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.
15. **PUBLIC INFORMATION:** Contractor agrees that the contract will be a public document, as to distribution of copies, and Contractor gives the STATE express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.

(Revision date: Apr 24, 2002)

SECTION 02766 P

GLASS SPHERES BEADS FOR WATERBORNE TRAFFIC PAINT

PART 1 GENERAL

1.1 SECTION INCLUDES

- A. Furnish glass beads as described in this special provision for use with waterborne paint.

1.2 REFERENCES

The most current version of the following specifications form a part of this specification:

- A. AASHTO M247-81 Standard Specification for Glass Beads Used in Traffic Paint
- B. ASTM D1155 Standard Test Method for Roundness of Glass Spheres
- C. ASTM D1213 Test Method for Crushing Resistance of Glass Spheres
- D. ASTM D1214 Standard Test Method for Sieve Analysis of Glass Spheres
- E. UDOT 2002 Standard Specifications for Road and Bridge Construction

1.3 SUBMITTALS

- A. Submit proposed labeling and packaging containers for individual 50-lb bead packages to UDOT Maintenance 4501 South 2700 West, Box 148250; Salt Lake City, UT 84114-8250 at bid summittal.
- B. Quality Assurance (QA) plan
 1. Required within five calendar days of bid summittal.
 2. Detail the methods and procedures used to ensure consistent production and shipment of a material meeting the performance requirements of this specification.
 3. Identify personnel responsible for carrying out the plan.
- C. Certification: At the time of bid, submit copies of certificates of compliance with these specifications from the manufacturer. Within 14 calendar days of receiving a notice from UDOT of an intent to award, submit a certificate of compliance with these specifications from an AASHTO accredited independent laboratory.
- D. Within seven calendar days of the bid submittal, the apparent low bidder submits a five pound sample of each of the beads proposed to be furnished. The samples

constitute a standard of quality. Deliveries of beads are substantially equal in quality to the submitted samples.

- E. Submit samples and reports to UDOT Maintenance Division; 4501 South 2700 West Box 148250; Salt Lake City, UT 84114-8250.

PART 2 PRODUCTS

2.1 MATERIALS

- A. Glass sphere beads for use with waterborne traffic paint, dual coated with di-amino functional silane and silicone moisture proof (AC110 or Aquabrite) coating meet this gradation:

US Sieve Size #	Percent Retained
20	5-10
30	25-45
50	45-60
80	0-10

- B. Other coatings may be required during the contract period. The coatings specified above and other coatings as needed will be provided as necessary with no additional charge.

2.2 PHYSICAL PROPERTIES

- A. Glass beads are transparent, clean, colorless glasss, smooth and spherically shaped, free from milkiness, pits or excessive air bubbles. At least 90% by visual count of each separate size fraction of glass beads when separated on the sieves are free of:
- 1) Dark specks of a diameter greater than one-fourth that of the glass bead.
 - 2) Air inclusion of a diameter greater than one-half that of the glass bead.
 - 3) Incipient fractures
 - 4) Milkiness of surface scoring or scratching
- B. Beads do not absorb moisture in storage. Beads shall remain free of clusters and lumps, and they shall flow freely from dispensing equipment. The beads shall be delivered in a dry condition.
- C. Minimum refractive index of 1.50 when tested by the liquid immersion method, at 25 degrees C, using a Tungsten light source.

- D. Specific gravity: 2.40 to 2.55 at 25 degrees C.
- E. Roundness: Minimum of 70% true spheres, ASTM D1155, procedure A, or an approved visual method.

2.3 PACKAGING

- A. Package beads in clean, leak proof and moisture proof 2400 pound-capacity containers. Clearly identify the type of paint compatible for use with the beads, the gradation, and the coatings as listed in paragraph 2.1 Materials, subparagraphs A through C. Include Net weight of beads and lot or batch number on each package. Proposed labeling is to be submitted to UDOT as required by paragraph 1.3.
- B. Secure 2400-pound-container of beads to standard wooden 42"X42" non-returnable type pallets. Pallets are serviceable and of appropriate strength to prevent bags from sagging through the top deck.

Bags on each pallet are secured to the pallet by encasing in a plastic sheeting such as shrink wrapping with a minimum thickness of 6 mils. At delivery all pallet loads are straight and stable, suitable for reshipping without further adjustment.

PART 3 EXECUTION - NOT USED

ATTACHMENT C: SPECIAL TERMS AND CONDITIONS

1. **CONTRACT ACCEPTANCE:** At the time the bid form is signed by the Offeror, the signature of that Offeror will be used as a legally binding signature, if awarded the contract. When signed by the Division of Purchasing and a Utah Department of Transportation representative and assigned a contract number, this document will become a legally binding contract with the Offeror for the contract period specified.
2. **CONTRACT INCLUSION:** The bid document, with its terms and conditions as well as any counter offers which are accepted/acceptable to the State, shall be incorporated into and by reference become a part of this contract.
3. **QUANTITY OR AMOUNT ESTIMATES:** This is a requirements contract with the State. Estimated contract amounts/quantities are for bidding purposes only and are not to be construed as a guarantee to purchase any amount.
4. **WAGES:** The Contractor shall be responsible for all applicable company wages in accordance with the federal, state, and local laws and ordinances.
5. **PRICING:** The Contractor agrees that the prices bid on the materials in this contract shall be guaranteed for a period of one (1) year.

ANY CHANGE REQUEST ON PRICES OR SPECIFICATIONS MUST BE MADE AT LEAST THIRTY (30) DAYS PRIOR TO THE REQUESTED EFFECTIVE DATE. ANY REQUEST FOR CHANGE ON PRICES OR SPECIFICATIONS MUST INCLUDE SUFFICIENT DOCUMENTATION SUPPORTING THE REQUEST. REQUESTS FOR CHANGE SHALL NOT BE EFFECTIVE UNTIL IT IS APPROVED BY THE PROCUREMENT SUPERVISOR OR THE PROCUREMENT MANAGER OF THE UTAH DEPARTMENT OF TRANSPORTATION.

6. **INVOICING:** THE CONTRACT NUMBER AND ORDER NUMBER MUST APPEAR ON ALL INVOICES, BILL OF LADING, PACKAGES AND ALL CORRESPONDENCE RELATING TO EACH ORDER AND DELIVERY.

The Contractor shall submit invoices to the appropriate Region/District ordering the material.

ATTACHMENT C: SPECIAL TERMS AND CONDITIONS

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7. **NON-ASSIGNMENT:** The Contractor shall not sublet, assign or transfer any part of this contract without prior written approval from the Procurement Supervisor or the Procurement Manager of the Utah Department of Transportation. The provision of monies due under this contract shall not be assignable without prior written approval from the Procurement Supervisor or the Procurement Manager of the Utah Department of Transportation.
8. **NON-COMPETE CLAUSE:** The Contractor represents its officers and employees are free to contract with the State and are not subject to restrictions by the terms of their present or past employment including, but not limited to an agreement not to compete for a period of time unless disclosure has been made. A Contractor must disclose to the State any possible conflicts, in writing, before the contract is signed and the State will evaluate whether to continue with contract execution. The State may elect to terminate a contract immediately with a Contractor who is subsequently determined to be subject to such restrictions without liability to the State. If the State elects to terminate a contract for this reason, the State will supersede paragraph #12 in Attachment A - Standard Terms and Conditions and will not provide the specified prior notice to the Contractor.
9. **DELIVERY:** Delivery of paint beads shall be coordinated with the Region/District Paint Foreman or designated representative. Paint beads will be ordered on as needed basis by the designated representative of each Region/District and delivered to the designated location which will be provided at time of order.
1. **ACCEPTANCE INSPECTION:** Acceptance inspection and testing will be performed upon delivery at each UDOT Region/District Maintenance yard by UDO. A supplier has the option to request acceptance inspection and testing at the manufacturing plant, however, the supplier will be responsible for all travel, lodging and per diem expenses incurred by the UDOT's Quality Assurance section for said testing.

ATTACHMENT C: SPECIAL TERMS AND CONDITIONS

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2. **LIQUIDATED DAMAGES:** In the event, beads are not inspected and approved by UDOT prior to shipping and upon arrival at UDOT are found to be non-complaint to the specifications, the State may elect to receive or reject the shipped beads. If rejected, the Contractor shall have fifteen (15) days to correct the problem. If not corrected, it is the responsibility of the Contractor to remove the rejected beads with the cost of removal being paid by the Contractor. Non-compliance with the specifications can result in termination of the contract. If UDOT deems that the out-of-specification beads would not significantly affect performance and choses to accept delivery, the Contractor shall be assessed liquidated damages in the amount of \$.02 per lb. which will be deducted from the contract price at the time of payment.
3. **LICENSING:** The Contractor agrees to secure and maintain all necessary licenses, permits and bonds that may be required by the State or local authorities to perform said services.
4. **PERFORMANCE & PAYMENT BOND:** At the time the contract is executed, the Contractor shall provide a performance and payment bond in the amount of fifteen percent (15%) of the bid amount guaranteeing performance, product and payment.